

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

JACKSON LEWIS LLP  
ATTORNEYS FOR DEFENDANT  
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ATTORNEY OF RECORD:  
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JEFF SCHMIDT,  
3003 Van Ness Street, NW #W406  
Washington, DC 20008

Plaintiff,

-against-

AMERICAN INSTITUTE OF PHYSICS,  
One Physics Ellipse  
College Park, Md. 20740  
Prince George's County

Defendant.

Case No. 04:3774 (AW)

Judge Alexander Williams

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**DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant, by and through its counsel, Jackson Lewis LLP, hereby responds  
and, where appropriate, objects to Plaintiff's First Set of Document Requests.

**Comments, Qualifications and Objections with Respect to  
Plaintiff's First Set of Requests for Production of Documents**

Defendant has endeavored to respond to Plaintiff's document requests on the basis of the documents now available. Persons who are not now employees of Defendant may have information or documents relevant to the subject matter of Defendant's responses. Defendant does not purport to provide any information or material possessed by such persons. The responses set forth herein are made on behalf of Defendant and documents are produced herewith to the extent that they are in the possession of Defendant.

The responses set forth herein are made without waiving the specific objections addressed to each particular request or the following:

1. The right to object on the grounds of competency, privilege, relevancy, materiality or any other proper ground to the use of material produced herein, for any purpose, in whole or in part, in any subsequent proceeding in this action or in any other action;
2. The right to object on any and all proper grounds, at any time, to other requests or other discovery procedures involving or relating to the subject matter of the requests herein responded to; and,
3. The right at any time to revise, correct, modify, supplement, or clarify any of the responses provided herein.

In the event any documents are inadvertently produced which are covered by the attorney-client privilege and/or are protected by the attorney work product doctrine, Defendant shall not be deemed to have waived its privileges or immunities as to such documents or any other matter arising during the course of this litigation or any subsequent proceeding.

### GENERAL OBJECTIONS

(a) Defendant objects to Plaintiff's instructions insofar as those instructions exceed the scope of discovery permissible under the rules of this Court and the Federal Rules of Civil Procedure. Defendant also objects to demands for documents which call for legal conclusions or opinions.

(b) Defendant objects to each request to the extent that it seeks information outside the scope of the allegations contained in Plaintiff's Complaint or fails to identify the individuals or entities to whom it relates. Defendant also objects to each request to the extent it does not identify the time period in question, is ambiguous as to time frame or refers to a time period unrelated to Plaintiff's Complaint. Such requests are objected to herein as "overbroad."

(c) Defendant objects to each request to the extent it calls for documentation or information which may be obtained from some other source which is more convenient, less burdensome or less expensive or otherwise imposes upon Defendant a vexatious and undue burden, is oppressive and/or is intended to harass Defendant. Such requests are objected to herein as "unduly burdensome."

(d) Defendant objects to each request to the extent it is vague, ambiguous, or otherwise lacks sufficient precision to permit a response. Such requests are objected to herein as "vague."

(e) Defendant objects to each request to the extent it seeks material or information prepared by or developed at the direction of counsel and is protected or privileged as attorney work product or material prepared in anticipation of litigation. Such requests are objected to herein as seeking "attorney work product" or "material prepared in anticipation of litigation."

(f) Defendant objects to each request insofar as it seeks material or information subject to the attorney-client privilege. Such requests are objected to herein as seeking material subject to the “attorney-client privilege.”

(g) Defendant objects to each request insofar as it seeks material or information that is confidential, a trade secret, subject to employees’ privacy rights or otherwise proprietary in nature, the disclosure of which would or could harm Defendant. Such requests are objected to herein as seeking material that is “confidential.”

(h) Defendant objects to each request insofar as it seeks information irrelevant to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Such requests are objected to herein as “not reasonably calculated to lead to the discovery of admissible evidence.”

To the extent that any request seeks material or information falling within the scope of the foregoing General Objections, it is specifically noted below by reference to the General Objection as defined herein.

## **SPECIFIC RESPONSES AND OBJECTIONS**

### **REQUEST NO. 1.**

All documents referring or relating to evaluations and/or the performance of Jeff Schmidt, the quality of his work, and any disciplinary actions proposed, contemplated and/or undertaken relating to Jeff Schmidt including, but not limited to, Jeff Schmidt's personnel files and the termination of his employment with AIP. This request includes any documents relating to evaluations or the performance of Jeff Schmidt maintained in the files of Dr. Schmidt's supervisors, bosses or co-workers.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 1.

## **REQUEST NO. 2.**

All correspondence from or to the University of Maryland or other persons or organizations including, but not limited to, organizations of physicists, relating to the writing or publication of Jeff Schmidt's book, *Disciplined Minds*, or the termination of Jeff Schmidt's employment with AIP.

## **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, prepared in anticipation of litigation or attorney workplace.

## **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

Defendant did not correspond with "the University of Maryland or other persons or organizations including, but not limited to, organizations of physicists, relating to the writing or publication of Jeff Schmidt's book, *Disciplined Minds*, or the termination of Jeff Schmidt's employment with AIP" prior to discharging Plaintiff in May 2000. But see, documents attached hereto as Exhibit 2. See also documents attached hereto as Exhibit 18.

### **REQUEST NO. 3.**

All documents referring or relating to Jeff Schmidt's appeal of his 1998 performance review including, but not limited to, any management-level discussions relating to whether or not to fire Dr. Schmidt after he showed the appeal papers to any co-workers.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 1.

#### **REQUEST NO. 4.**

All documents referring or relating to evaluations and/or the job performance, quality of work, work place activities, compensation, work requirements and any disciplinary actions proposed, contemplated and/or undertaken for the following individuals: Bertram M. Schwarzschild, Jean Kumagai, Toni Feder and Paul Elliott.

#### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as it seeks confidential information regarding individuals who are not parties to the instant action.



**REQUEST NO. 5.**

All documents referring or relating to any corporate, business, academic or associational relationship that AIP or Physics Today has, directly or indirectly, with the University of Maryland including, but not limited to, the affiliation agreement referred to in the letter attached as Exhibit A.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

At this juncture, Defendant AIP has been unable to locate any documents responsive to this Request.

### **REQUEST NO. 6.**

All documents referring or relating to any diversity, equal opportunity or affirmative action training proposed, contemplated or offered by AIP to any of its employees.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to this Request to the extent that it seeks confidential and sensitive business information. Defendant further objects to this Request on the grounds of the self-evaluative/self-critical privilege.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 6. See also documents attached hereto as Exhibits 11 and 18.

### **REQUEST NO. 7.**

All documents referring or relating to all persons applying for positions at AIP including, but not limited to, the number of applicants by race, gender, religious affiliation, national origin, sexual orientation or other demographic category and the disposition of their applications as reflected in documents including, but not limited to, interview notes, summaries, evaluations, employment applications and/or letters or documents relating to offering employment at AIP or rejecting an application for employment.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request on the grounds that it seeks confidential and sensitive business information that is neither pertinent nor relevant to Plaintiff's claims in this matter. In this matter, Plaintiff does not claim that he himself was not hired or refused employment because of his own race or other protected characteristic. Accordingly, this Request is neither relevant nor material to Plaintiff's claims in this matter. Defendant further objects to this Request on the grounds of the self evaluative/self-critical privilege.

### **REQUEST NO. 8.**

All documents referring or relating to the qualifications required or considered for AIP employees including, but not limited to, the position of staff editor at Physics Today.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request on the grounds that it seeks confidential and sensitive business information that is neither pertinent nor relevant to Plaintiff's claims in this matter. In this matter, Plaintiff does not claim that he himself was not hired or refused employment because of his own race or other protected characteristic. Accordingly, this request is neither relevant nor material to Plaintiff's claims in this matter.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 1.

### **REQUEST NO. 9.**

All documents referring or relating to internal or external reports relating to diversity or equal opportunity practices of AIP or information submitted to the federal government or any other person or entity referring or relating to the diversity or equal employment opportunity practices of AIP including, but not limited to, the 1996 Affirmative Action Program for American Institute of Physics and all documents relating to the July 11, 1996, memorandum from Melinda Underwood to Theresa C. Braun detailing female and minority utilization at AIP.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request on the grounds that it seeks confidential and sensitive business information that is neither pertinent nor relevant to Plaintiff's claims in this matter. In this matter, Plaintiff does not claim that he himself was not hired or refused employment because of his own race or other protected characteristic. Accordingly, this request is neither relevant nor material to Plaintiff's claims in this matter. Defendant also objects to this Request on the grounds of the self-evaluative/self-critical privilege.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 6, 11 and 18.

**REQUEST NO. 10.**

All documents referring or relating to AIP's or Physics Today's policies on staff writings or publications including, but not limited to, all documents related to AIP's policy regarding AIP employees writing (*i.e.* articles or books) for organizations, persons or other entities other than AIP.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 11.

**REQUEST NO. 11.**

All versions of AIP's and Physics Today's employee handbooks or manuals that were in effect for the period 1981 to present.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague, burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 11.

### **REQUEST NO. 12.**

All documents referring or relating to employee job security issues including, but not limited to, the proposed agenda for the two-day retreat scheduled for November 19-20, 1996, the November 17, 1996 statement by Stephen Benka regarding job security and the October 15, 1997 statement from Charles Harris to Physics Today staff in which Mr. Harris stated that "the staff should be free to engage in constructive criticism and discussion without fear of retribution."

### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 1, 11 and 12.



**REQUEST NO. 13.**

All documents referring or relating to employee concerns about the diversity of the AIP and Physics Today staff including, but not limited to, the proposed agenda for the two-day retreat scheduled on or about November 19-20, 1996.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 13. See also documents attached hereto as Exhibits 1 and 12.

**REQUEST NO. 14.**

All documents referring or relating to AIP or Physics Today's proposed, contemplated or actual decision to recruit and or not recruit minority and/or women employees.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is unclear as to what Plaintiff is requesting herein, as it is unsure what Plaintiff means by "proposed, contemplated or actual decision to recruit and/or not recruit minority and/or women employees". Defendant also objects to this Request on the grounds of the self-evaluative/self-critical privilege.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 6, 11, 12 and 13.

### **REQUEST NO. 15.**

All documents referring or relating to AIP's computer use policy including, but not limited to, the memorandum from Marc H. Brodsky on or about June 18, 1998 regarding the policy.

### **OBJECTIONS**

Defendant objects to this Request on the grounds that is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 15. See also documents attached hereto as Exhibit 11.

**REQUEST NO. 16.**

All documents referring or relating to AIP or Physics Today's policy regarding carrying over unused vacation time to a subsequent year including, but not limited to, management's decision to permit Paul Elliott to carry over to the year 2000 his unused 1999 vacation time and the decision not to permit Dr. Schmidt to carry over his vacation time for that same period.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request to the extent it seeks confidential information regarding individuals who are not parties to the instant action.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 1, 11 and 16.

**REQUEST NO. 17.**

All documents referring or relating to the investigation by the State of Maryland Department of Labor Unemployment Office into unemployment benefits for Jeff Schmidt including, but not limited to, all hearing notes.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonable calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

To be provided if located.

**REQUEST NO. 18.**

All documents referring or relating to the Prince George's County and/or EEOC's investigation into the firing of Jeff Schmidt.

**RESPONSE**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, attorney work product or documents prepared in anticipation of litigation. Defendant further objects to this Request on the grounds that the documents requested herein are public documents that Plaintiff can obtain directly from the Prince George's County Human Relations Commission

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 18.

**REQUEST NO. 19.**

All documents referring or relating to employee break periods during regular working hours.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 11.

**REQUEST NO. 20.**

All documents referring or relating to Jeff Schmidt's book *Disciplined Minds*.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached as Exhibits 1 and 2.



**REQUEST NO. 21.**

All documents referring or relating to the regulation of employee communication during or after regular working hours including, but not limited to, “gag orders” and AIP’s ability, right or proposed, contemplated or actual decision to monitor workplace conversations, communications and/or activity.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

Defendant never imposed a “gag order” on Plaintiff or other employees. But see documents attached hereto as Exhibits 1 and 11.

**REQUEST NO. 22.**

All documents referring or relating to any of Jeff Schmidt's public statements or appearances, including, but not limited to, Dr. Schmidt's speech in or about January 2004 at the annual meeting of the American Association of Physics Teachers and documents relating to Marc Brodsky's proposed, contemplated or actual efforts or attempts to have the American Association of Physics Teachers cancel, abbreviate or otherwise alter Dr. Schmidt's speech.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

None.

**REQUEST NO. 23.**

All documents referring or relating to how work is assigned or distributed at *Physics Today*, including, but not limited to, AIP's decision to allow employees to work from their homes.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 1, 11 and 12.

#### **REQUEST NO. 24.**

All documents referring or relating to employee salaries or compensation including, but not limited to, any salary differentials between minority or women personnel, and non-minority or non-female employees and AIP's decision to award Jean Kumagai a salary increase effective on or about June 1, 1997.

#### **OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, unduly vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as it seeks confidential and sensitive information regarding individuals who are not parties to the instant matter. Defendant also objects to this Request on the grounds of the self-evaluative/self-critical privilege.

#### **RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 24. See also documents attached hereto as Exhibits 1 and 11.

**REQUEST NO. 25.**

All documents referring or relating to Jeff Schmidt's activities relating to employee diversity at Physics Today.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibits 1 and 13.

**REQUEST NO. 26.**

All documents referring or relating to AIP's decision to change Jeff Schmidt's job responsibilities and decrease his editing quota in or around August 1997.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

See documents attached hereto as Exhibit 1.

**REQUEST NO. 27.**

All documents referring or relating to Stephen G. Benka's performance as a manager including, but not limited to, documents showing that AIP required, encouraged and/or paid for him to take management or other training classes, and documents relating to his management style or treatment of AIP staff members.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as it seeks confidential and sensitive personal information that is neither relevant nor material to Plaintiff's instant claims.

**REQUEST NO. 28.**

All documents referring or relating to the management and/or monitoring of Jeff Schmidt and his work place activities by supervisors, bosses, superiors or management-level AIP employees.

**OBJECTIONS**

Defendant objects to this Request on the grounds that it is overbroad, vague and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE**

Subject to, and without waiving the foregoing objections, Defendant responds as follows:

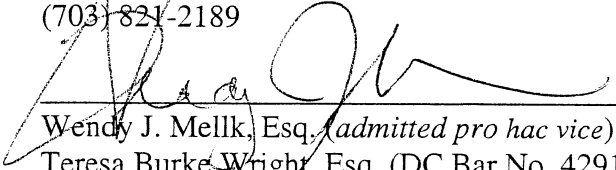
See documents attached hereto as Exhibit 1.



Dated: Vienna, Virginia  
April 25, 2005

JACKSON LEWIS LLP  
~~ATTORNEYS FOR DEFENDANT~~  
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Vienna, Virginia 22182  
(703) 821-2189

By:



Wendy J. Mellk, Esq. (*admitted pro hac vice*)  
Teresa Burke Wright, Esq. (DC Bar No. 429196)